

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION**

**Call to Order:** By **CHAIRMAN KEITH BALES**, on March 31, 2003 at 3 P.M., in Room 422 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Keith Bales, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Ken (Kim) Hansen (D)  
Sen. Sam Kitzenberg (R)  
Sen. Walter McNutt (R)  
Sen. Linda Nelson (D)  
Sen. Gerald Pease (D)  
Sen. Corey Stapleton (R)  
Sen. Mike Taylor (R)  
Sen. Joseph (Joe) Tropila (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jennifer Stephens, Committee Secretary  
Doug Sternberg, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 481, 3/19/2003  
Executive Action: SB 481, HB 677, HB 720, HB 553, HB 644, HB 648

**HEARING ON SB 481**

**Sponsor:** SEN. JERRY BLACK, SD 44, SHELBY

**Proponents:** Kerry Hegreberg, MT Contractors Association  
Dave Galt, Director, MT Department of  
Transportation

**Opponents:** None

**Opening Statement by Sponsor:**

SEN. JERRY BLACK, SD 44, SHELBY, explained that SB 481 is a contingency avoidance bill. He said the bill is necessary in the event that the ethanol bill passes. If the ethanol bill goes into effect without SB 481, it would mean that ethanol would receive a 15% discount. Furthermore, the discount would be deducted from the state's highway trust fund. He said that with this contingency avoidance bill, there would be no tax incentive on ethanol. In addition, SB 481 is contingent on the ethanol bill being passed.

**Proponents' Testimony:**

Kerry Hegreberg, MT Contractors Association, spoke on behalf of the bill. He said he had worked to insure that if ethanol were mandated, it would not be subsidized. He said that increasing the level of ethanol consumption while providing a tax incentive would diminish the amount of revenue available to the state to build highways. He urged the committee not to kill the bill until the outcome of the ethanol mandate is known because both bills go hand-in-hand.

Dave Galt, Director, MT Department of Transportation, urged the support of the bill if the ethanol bill passes. He suggested there be a dual contingency clause in the bill to ensure that one bill would not be passed into law without the other.

**Questions from Committee Members and Responses:**

SEN. KEITH BALES asked Doug Sternberg, Legislative Staffer, if it would be a wise idea to include a dual contingency clause in the bill. Mr. Sternberg said it wouldn't hurt. He agreed to draw up the amendment.

**Closing by Sponsor:**

**SEN. JERRY BLACK, SD 44, SHELBY**, agreed on inserting the dual contingency clause. He closed on SB 481.

**EXECUTIVE ACTION ON SB 481**

**Motion:** SEN. NELSON moved that SB 481 DO PASS.

**Motion:** SEN. MCNUTT moved that SB 481 BE AMENDED.

**Discussion:**

**SEN. MCNUTT** asked that SB 481 be amended to include a dual contingency clause.

**Motion/Vote:** SEN. BALES moved that SB 481 BE AMENDED. Motion carried unanimously.

**Motion/Vote:** SEN. NELSON moved that SB 481 DO PASS AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 677**

**Motion:** SEN. NELSON moved that HB 677 BE CONCURRED IN.

**Motion:** SEN. TROPILA moved that HB 677 BE AMENDED.

**Discussion:**

**Mr. Sternberg** explained **SEN. TROPILA'S** amendment. He also passed out copies of the amendment, **EXHIBIT**(ags68a01).

**SEN. COREY STAPLETON** asked **SEN. JOE TROPILA** why he wanted to change the language in section 7. **SEN. TROPILA** said the new language would be more appropriate for Conservation Districts. He said **Ray Beck** could probably answer the question better. **SEN. STAPLETON** deferred the question to **Ray Beck, Administrator, MT Department of Natural Resources and Conservation**. **Mr. Beck** agreed there should be some oversight by the district judge.

**SEN. STAPLETON** asked **Nancy Schlepp, MT Farm Bureau**, what she thought of the amendment. **Ms. Schlepp** said she thought the amendment was a good compromise.

**Motion/Vote:** SEN. STAPLETON moved that HB 677 BE AMENDED. Motion carried unanimously.

**Motion/Vote:** SEN. TROPILA moved that HB 677 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 720**

**Motion:** SEN. TROPILA moved that HB 720 BE INDEFINITELY POSTPONED.

**Discussion:**

SEN. KEITH BALES said he was not in favor of indefinitely postponing the bill because he strongly believes the bill would make some good changes. Specifically, he thinks changes need to be made concerning the time it takes for a person to get a water right.

SEN. STAPLETON said he was not present for the hearing of the bill.

SEN. TROPILA withdrew his motion to INDEFINITELY POSTPONE.

**Motion:** SEN. TAYLOR moved that HB 720 BE CONCURRED IN.

**Motion:** SEN. TAYLOR moved that HB 720 BE AMENDED.

**Discussion:**

Mr. Sternberg passed out two sets of amendments, one set proposed by REP. HURWITZ, EXHIBIT(ags68a02); the other by SEN. TROPILA, EXHIBIT(ags68a03). Mr. Sternberg explained both sets of amendments and made a note to the committee that both sets of amendments were conflicting, meaning that both could not be adopted.

**Motion:** SEN. TROPILA moved that HB 720 BE AMENDED.

**Discussion:**

SEN. TROPILA said that he would like to see his amendments adopted. He explained that he would like to leave the objection processed that is already in place intact and unchanged.

SEN. TAYLOR asked John Bloomquist if senior water rights users would have to defend against other uses. Mr. Bloomquist said that when an application is filed, the permit criteria burden is on the applicant. As he understands SEN. TROPILA'S amendments, the application process would be eliminated.

**SEN. DALE MAHLUM** asked **Mr. Bloomquist** if a person with a well established water right had to defend himself if someone else wanted to claim that water right. **Mr. Bloomquist** said that in the DNRC permit process, someone cannot file on someone else's water right. The only time a person has to defend a water right is when the water court comes around and issues a change. If someone files an objection to a water right, then a person has to defend their water right. He explained that the amendment would affect instances when a new appropriator wants to appropriate water or when he wants to change a portion of an existing water right. **SEN. MAHLUM** further asked if **SEN. TROPILA'S** amendment would take away a persons opportunity to defend a water right. **Mr. Bloomquist** said no.

**SEN. TROPILA** asked **John Wilson, MT Trout Unlimited**, to explain the amendments. **Mr. Wilson** explained that the amendments would change the objection process. He outlined section 2 of the amendment.

**SEN. TAYLOR** asked **Mr. Wilson** if the bill would speed up the amount of time it takes to get a water right. **Mr. Wilson** said the bill would do two things: it would speed up the application process and clear up objections from in-stream flow. He also explained that **SEN. TROPILA** only wants to change the objection section.

**Mr. Sternberg** explained that striking section 2 from the bill would not repeal the law; it just takes that section out of the bill. Therefore, the effect of adopting **SEN TROPILA'S** amendment would leave the law unchanged.

**SEN. STAPLETON** said that the 30 days allotted in the bill seemed a bit short. On the other hand, he realized that there needed to be a limit. He asked if there was a time people could agree upon. **Mr. Wilson** said the amount of time is dependent on how many people are working. He reasoned that with the budget how it is, it is harder to hire more employees. **SEN. STAPLETON** said that 2-3 years is too long to wait, despite the number of employees. He asked again for another estimate of a proper amount of time. **Mr. Wilson** said that the DNRC should be processing the information as fast as they can. He guessed the process from start to finish should take approximately 6 months.

**SEN. TAYLOR** asked **Mr. Bloomquist** if the current objections to water right laws are state-wide. **Mr. Bloomquist** said yes. **SEN. TAYLOR** further asked if the bill would affect in-stream flow. **Mr. Bloomquist** explained that in-stream rights filter into the

priority system. He said that in-stream rights protect the level of flow.

**SEN. TROPILA** asked **Bob Lane, Attorney**, to go over the amendments. **Mr. Lane** explained that the amendments would take out part of section 2. He said the amendment leaves the same kind of requirements stated in the law right now.

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**SEN. BALES** asked **Mr. Lane** where the monitoring devices would be placed that measured the stream flow. **Mr. Lane** said they would be placed down at the mouth of the stream. **SEN. BALES** further asked if the DNRC had worked out compromises concerning in-stream flow rights. **Mr. Lane** said that it is usually his job to clarify those discrepancies.

**SEN. BALES** asked **Mr. Bloomquist** how many cases of protest he knew of. **Mr. Bloomquist** said on average, the DNRC gives out approximately 10 permits a year. **SEN. BALES** further asked if any of the permits had been worked out where changes could be made. **Mr. Bloomquist** said that if the problems were worked out in appropriation, the DNRC would work with the agreements of the parties involved.

**SEN. TROPILA** asked **Kathleen Williams, Water Resources Program Manager; Fish, Wildlife, and Parks**, to clarify some figures. He wanted to know how many in-stream changes had the department objected to and what had been the disposition of those changes. She explained that a change in an existing right is one proceeding; the request for a new proceeding is another. She said there had been over 1,000 notices of either changes or new permit requests in the last 4 years. The DNRC had objected to 35. Also, 3 permit requests that were rejected went to a hearing; of those, all were granted water rights with conditions. Only 2 cases that the DNRC objected to were changes with an existing water right.

**SEN. WALTER MCNUTT** asked **Mr. Lane** if PP&L could object to a water right. **Mr. Lane** said whenever there is an application for a change with an existing right or an application for a new right, everyone who is affected has the right to object. **SEN. MCNUTT** asked if the DNRC was the only party involved in deciding water rights. **Mr. Lane** said no, many different parties are involved.

**SEN. TROPILA** emphasized that he was not trying to change section 1 of the bill. He wants to delete section 2 because he thinks it contains too many flaws.

**Motion/Vote:** SEN. TROPILA moved that HB 720 BE AMENDED. Motion carried 8-2 with BALES and MAHLUM voting no.

SEN. STAPLETON suggested a conceptual amendment. He asked that "30 days" be changed to "6 months". He also wanted to eliminate the phrase, "...the time period specified by the department". These changes would affect line 9, line 21, and line 22.

SEN. BALES asked REP. DAN HURWITZ if he objected to the amendment. REP. HURWITZ said he didn't object.

SEN. LINDA NELSON asked if the time change would affect the fiscal note. SEN. STAPLETON said he didn't think so. SEN. NELSON asked for a revised fiscal note. Mr. Bloomquist explained the new fiscal note.

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**Motion/Vote:** SEN. BALES moved that HB 720 BE AMENDED. Motion carried unanimously.

**Motion:** SEN. STAPLETON moved that HB 720 BE CONCURRED IN AS AMENDED.

**Discussion:**

SEN. NELSON said she still had a problem with the fiscal note. SEN. BALES said the fiscal note shouldn't be a problem. He said the fiscal note would be change if it was inaccurate.

**Vote:** Motion that HB 720 BE CONCURRED IN AS AMENDED carried unanimously.

**EXECUTIVE ACTION ON HB 553**

**Motion:** SEN. TROPILA moved HB 553 .

Doug Sternberg explained that SEN. TROPILA had approached him to draw up some amendments. Mr. Sternberg gave a summary of the amendments, EXHIBIT (ags68a04) .

**Motion:** SEN. TROPILA moved that HB 553 BE AMENDED.

**Discussion:**

**SEN. TROPILA** said the amendments resolved concerns the committee had during the reading of the bill. He added that the sponsor of the bill had agreed to the amendments.

**Vote:** Motion that HB 553 BE AMENDED carried unanimously.

**Motion/Vote:** SEN. TROPILA moved that HB 553 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 644**

**Motion:** SEN. MAHLUM moved that HB 644 BE CONCURRED IN.

**Discussion:**

**SEN. NELSON** announced that she had an amendment to the bill. **Mr. Sternberg** explained **SEN. NELSON'S** amendment, **EXHIBIT (ags68a05)**. He also explained **SEN. MCNUTT'S** amendment, **EXHIBIT (ags68a06)**.

**Motion:** SEN. MCNUTT moved that HB 644 BE AMENDED.

**Discussion:**

**SEN. MCNUTT** said he was in favor of amending the bill because he felt it was better for the individuals in his district, as well as for all Montanans. The amendment would change the time period in which cloud seeding could be done.

**Vote:** Motion that HB 644 BE AMENDED carried unanimously.

**Motion:** SEN. NELSON moved that HB 644 BE AMENDED.

**SEN. MAHLUM** said that he thought **REP. RICE**, the sponsor of the bill, would be in favor of the amendments. He stood in favor of the two amendments.

**Motion/Vote:** SEN. MAHLUM moved that HB 644 BE AMENDED. Motion carried unanimously.

**SEN. NELSON** asked **Mr. Sternberg** what kind of laws the bill would be repealing. **Mr. Sternberg** explained that under the present process for licensing cloud seeding operations, a bond is required. One of the affects of the bill would be that the bonding requirements would be changed. He added that the new bill would require an environmental impact statement. In addition, the amendments would specifically exempt weather



modification from the Environmental Protection Act. Licencing and permit fees would also be altered.

**SEN. STAPLETON** asked if there was a guideline detailing what chemicals could not use to seed clouds. **SEN. MCNUTT** said he didn't know of any other chemicals that have successfully seeded clouds. He also didn't know if different types of chemicals could be limited.

**SEN. TAYLOR** explained that federal environmental laws would still be in place if the bill was concurred in. He said those laws are stringent enough to prevent any misuse of chemicals.

**Motion/Vote:** **SEN. TAYLOR** moved that HB 644 BE CONCURRED IN AS AMENDED. Motion failed 4-6 with BALES, MAHLUM, MCNUTT, and TAYLOR voting aye.

**Substitute Motion:** **SEN. BALES** made a substitute motion that HB 644 BE INDEFINITELY POSTPONED AND THE VOTE REVERSED.

**EXECUTIVE ACTION ON HB 648**

**Motion:** **SEN. MAHLUM** moved that HB 648 BE CONCURRED IN.

**Mr. Sternberg** said that **SEN. MCNUTT** asked him to draw up an amendment for the bill. **Mr. Sternberg** summarized the bill and distributed it to the committee, **EXHIBIT (ags68a07)**.

**Motion:** **SEN. MCNUTT** moved that HB 648 BE AMENDED.

**Discussion:**

**SEN. MCNUTT** explained that the amendments were congruent with the changes proposed by the proponents of the bill.

**Vote:** Motion that HB 648 BE AMENDED carried unanimously.

**Vote:** Motion that HB 648 BE CONCURRED IN AS AMENDED carried 9-1 with KITZENBERG voting no.

**ADJOURNMENT**

Adjournment: 5:30 P.M.

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SEN. KEITH BALES, Chairman

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JENNIFER STEPHENS, Secretary

KB/JS

**EXHIBIT** (ags68aad)